IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WA.No. 1426 of 2007()

AGAINST THE JUDGEMENT/ORDER IN OP.14542/2001 Dated 21/12/2006
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APPELLANTS: RESPONDENTS:
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1. THE SECRETARY,
K.S.E.B. VYDHYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.

2. CHIEF ENGINEER (GENERAL),
K.S.E.B., VYDHYUDHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.

3. EXECUTIVE ENGINEER,
ELECTRICAL DIVISION, K.S.E.B., KOLLAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS: PETITIONER & RESPONDENT
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1. P.P. MARGRETT, W/O. LATE S.GEORGE,
JANE COTTAGE, KANNIMMEL CHERRY, KAVANAD P.O.,
KOLLAM.

2. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BENNY GERVASIS FOR R2
SRI.M.V.THAMBAN FOR R1

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON 13/07/2007, DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.
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W.A. NO. 1426 OF 2007
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Dated this the 13th day of July, 2007

J U D G M E N T

Antony Dominic, J.

The question that arises for consideration is regarding the claim of the first respondent for full family pension that is due on account of the death of her husband while in the service of the appellants. It is stated that late S.George was an employee of the appellants and was a subscriber to the Contributory Family Pension Scheme. At the time of death, apart from the first respondent, Sri.George had a son in a previous marriage. On the death of the employee, in terms of the rules governing family pension, the son was eligible for 50% of the eligible family pension till he attains 18 years. Accordingly 50% of the family pension amount was paid to the son and the balance was paid to the first respondent. On the son attaining 18 years, he having

been rendered ineligible for further payment, first respondent claimed that she should be paid the full amount of family pension. This having been denied by the appellants, the writ petition was filed by the first respondent. The learned Single Judge disposed of the original petition by judgment dated 21st December 2006, upholding the claim of the first respondent. Aggrieved by the judgment, the respondents in the original petition are in appeal.

2. In view of certain subsequent developments, adjudication on the merits of the dispute regarding the entitlement of the first respondent for full family pension is not necessary. It is the common case that the Contributory Family Pension Scheme in question is governed by Rule 90, Part III of KSR. By GO(P) No.190/2007/Fin. Dated 8th May 2007, Rule 90(7)(i), which provided for payment of family pension to more than one widow has been deleted. Rule 90 Sub Rule 7 Clause II has also been amended to the following effect:

Rule	***Existing Rule***	***Amendment***
90 (7) (ii)	Where the deceased employee is survived by a widow but has left behind an eligible son/daughter from another wife, the eligible son/daughter will be paid the share of Family Pension which the mother would have received if she had been alive at the time of the death of the employee.	Where the deceased employee is survived by a widow but has left behind an eligible son/daughter from another wife, the eligible son/daughter will be paid the share of Family Pension which the mother would have received, if she had been alive at the time of the death of the employee. While sharing Family Pension between children of first marriage and spouse/children in 2nd marriage, restoration of full Family Pension can be allowed in case where 50% is no longer payable by the Government to the children of first marriage/spouse or children by second marriage.

The necessity for the amendment to the Rule is stated to be that under the then existing provisions in the KSR, the widow would continue to get only 50% of the family pension even though the balance 50% was no longer payable by the Government once

children in the first marriage are rendered ineligible. With the amendment as stated above, provision has now been incorporated for restoration of full family pension to the widow where 50% is no longer payable to the children of first marriage/spouse or children by second marriage. In the light of the amendment as above, we hold that the first respondent is eligible for restoration of full family pension.

3. However, the parties were at controversy regarding the effective date of restoration of full pension. While the counsel for the first respondent asserted first respondent's right to get full family pension throughout, the counsel for the appellant contended that the benefit of amendment should be only from 8th May 2007 when the Government order was issued. As we have already noticed, before the amendment to the Rule by GO(P) No.190/2007/Fin. dated 8th May 2007, the provisions of the KSR did not contain any clause for restoration of full pension to the wife, once the children in the previous marriage becomes ineligible for payment of any portion of family pension. This

anomaly was rectified by Government and amendment has been incorporated only from 8th May 2007. While introducing the amendment, there is no provision in the amended rule to infer that the said amendment is retrospective. Such being the case, we are of the view that the amendment introduced by GO(P) No.190/2007Fin. dated 8th May 2007 can only be prospective. In that view of the matter, we hold that the entitlement of the first respondent for restoration of full family pension is only from 8th May 2007.

In the light of what is discussed above, the writ appeal is disposed of modifying the judgment of the learned Single Judge that the benefit of restoration of full family pension to the first respondent shall be only from 8th May 2007.

K.S.RADHAKRISHNAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp